REMARKS

Applicant wishes to thank the Examiner for the consideration given this case to date. Applicant has now had an opportunity to carefully consider the Examiner's action, and respectfully submits that the application, as amended, is now in condition for allowance. Currently, claims 1-20 are pending.

THE EXAMINER'S ACTION

In the Office Action dated September 10, 2003, the Examiner:

rejected claims 1-11 and 15-20 under 35 U.S.C. § 112, second paragraph as being indefinite;

rejected claims 1-11 and 15-20 under 35 U.S.C. § 112, first paragraph as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention;

rejected claims 1-11 and 15-20 under 35 U.S.C. § 102(a) as being anticipated by Mitts et al.;

rejected claim 12 under 35 U.S.C. § 102(b) as being anticipated by Hedrick et al.;

rejected claims 1-11 and 15-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 6,069,129; and

indicated claims 13 and 14 would be allowable if rewritten in independent form.

Rejections Under 35 U.S.C. § 112

The Office rejected claims 1-11 and 15-20 under 35 U.S.C. § 112, first and second paragraphs. Applicant understands that both rejections arise from use of the term "biological equivalents" in the independent claims 1 and 15. Although Applicant strongly disagrees with the Office's assertion, for reasons of economy Applicant here amends the claims, removing the phrase and rendering the rejections moot. However, Applicant reserves the option of reintroducing the claims in this or later applications in accordance with applicable procedures.

Additionally, Applicant is entitled to a construction that, at minimum, construes the amended claims as including all equivalents under the doctrine of equivalents.

Rejections Under 35 U.S.C. § 102(a)

For a reference to be proper under 35 U.S.C. § 102(a) it must disclose each and every element of the invention claimed. Here, the Office concedes that Mitts et al. WO00/28996 A1 "does not teach a peptide hav[ing] the sequence of SEQ ID 55-65." Accordingly, Applicant invites the Office to reconsider and withdraw this rejection.

Rejections Under 35 U.S.C. § 102(b)

The Office asserts that Hedrick et al. WO98/47921 anticipates claim 12, and points to claim 1, page 99, line 12. Initially Applicant notes no disclosure corresponding to the claimed R_2 at the cited location. Notwithstanding this shortcoming, Applicant here amends the claim to call for, among others, R_2 including a sequence having 1-10 amino acids. Thus, because the reference fails to disclose the elements of the claim, Applicant invites the Office to reconsider and withdraw the present rejection.

Double Patenting

The Office has rejected claims 1-11 and 15-20 under the judicially created doctrine of obviousness-type double patenting over the U.S. Patent 6,069,129. Here, the Office concedes that the reference "does not teach a peptide hav[ing] the sequence of SEQ ID 55-65." Thus, Applicant invites the Office to reconsider and withdraw this rejection.

CONCLUSION

Applicant appreciates the Examiner's attention to this matter. The Office is authorized to charge any additional fees or credit any overpayments to Deposit Account 02-2051 referencing Attorney Docket No. 25812-75.

Respectfully submitted,

Dated: 1/12/04

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